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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 662

HUEY R. LEE, JR., BY HIS NEXT FRIEND,
L. D. TURBERVILLE,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM N. McQUEEN,
Attorney General of Alabama;
JOHN O. HARRIS,
Assistant Attorney General of Alabama,
Counsel for Respondent.

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I

Opinion of the Court Below

The opinion of the Supreme Court of Alabama has not been officially reported, but is published in 27 So. 2d 147. See record pages 308-314. The original conviction of petitioner is officially reported in 246 Ala. 343, 20 So. 2d 471.

II

Jurisdiction

Petitioner seeks to invoke the jurisdiction of this Court to review the judgment of the Supreme Court of Alabama rendered in this cause, and relies upon Section 237 (b) of

the United States Judicial Code as amended on February 13, 1945, 43 Stat. 937 (U. S. C. A., Title 28, Section 344) as giving this Court jurisdiction.

III

Statement of the Case

We do not deem it necessary to set forth a statement of this case. The opinion of the Supreme Court of Alabama as reported in the record before this Court, beginning on page 309 to top of page 311, reflects the true facts in the history of this case and is incorporated herein by reference.

Proposition of Law

I

A decision of a state court resting on grounds of state procedure does not present a Federal question.

French v. *Hopkins* (Cal. 1888), 124 U. S. 524, 8 S. Ct. 589, 31 L. Ed. 536;

O'Neil v. *Vermont* (Vt. 1892), 144 U. S. 323, 12 S. Ct. 693, 36 L. Ed. 450;

Tripp v. *Santa Rosa St. R. Co.* (Cal. 1892), 144 U. S. 126, 12 S. Ct. 655, 36 L. Ed. 372;

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Loeber v. *Schroeder* (Md. 1893), 149 U. S. 580, 13 S. Ct. 934, 37 L. Ed. 856;

McNulty v. *California* (Cal. 1893), 149 U. S. 645, 13 S. Ct. 959, 37 L. Ed. 882;

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Wood v. *Brady* (Cal. 1893), 150 U. S. 18, 14 S. Ct. 6, 37 L. Ed. 981;

Northern Pac. R. Co. v. *Patterson* (Mont. 1894), 154 U. S. 130, 14 S. Ct. 977, 38 L. Ed. 934;
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Gibson v. *Mississippi* (Miss. 1896), 162 U. S. 565, 16 S. Ct. 904, 40 L. Ed. 1075;
Milkwagon Drivers Union of Chicago, Local 753 v. *Meadowmoor Dairies, Ill.*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836;
Gasquet v. *Lapeyre, et al.*, 242 U. S. 367;
Harice LeRoy Carter, Petitioner, v. *People of the State of Illinois,* S. Ct. of the U. S., Advance Sheets, October Term, 1946, No. 36, December 9, 1946.

ARGUMENT

The Supreme Court of Alabama did not decide a Federal question of substance not heretofore determined by this Court. Neither did it decide any question presented to it in this case in a way probably not in accord with applicable decisions of this Court, but fully and fairly decided the issues sought here to be reviewed on an independent non-federal ground.

The decision in this case is based primarily and solely on the ground that the petition filed with the Supreme Court of Alabama for leave to file in the Circuit Court of Barbour County, Alabama, a petition for writ of error *coram nobis* was wholly lacking in that degree of substantiality required of petitions of this kind.

Alabama adopted this common law writ as its response to the requirements of certain decisions of the Supreme Court of the United States (*Frank* v. *Mangum*, 237 U. S. 309; *Moore* v. *Dempsey*, 261 U. S. 86; *Johnson* v. *Zerbst*,

304 U. S. 458; *Mooney* v. *Hollohan,* 294 U. S. 103; *Bowen* v. *Johnston,* 306 U. S. 19; *Hysler* v. *Florida,* 315 U. S. 411):

> "For the judicial correction of a wrong committed in the administration of criminal justice and resulting in a deprivation of life or liberty without due processs of law."
>
> *Johnson* v. *Williams, Warden,* 13 So. 2d 683.

It is not a writ of right, but may be granted in the exercise of sound judicial discretion, and will not be granted unless it be duly shown that a fact existed at the trial, that, if then known to the Court would have prevented the judgment that was rendered. *Lamb* v. *State,* 91 Fla. 396, 107 So. 535.

A petitioner must make a full disclosure of the facts relied on by him and not merely his conclusions as to the nature and effect of such facts. The proof must enable the appellate court to determine whether under settled principles pertaining to the writ that the facts alleged would afford just grounds for the application to the lower court for the writ of error *coram nobis. Hysler* v. *Florida,* 315 U. S. 411.

The procedural machinery in Alabama is such that every insane person charged with a crime, or convicted of a crime, has a remedy.

Title 15, Section 423, *Code of Alabama 1940;*
Title 15, Section 425, *Code of Alabama 1940;*
Title 15, Section 426, *Code of Alabama 1940;*
Title 15, Section 428, *Code of Alabama 1940;*
Title 45, Section 222, *Code of Alabama 1940.*

It may be seen from the above statutes that ample opportunity is afforded every one in Alabama accused of a criminal offense or convicted of a criminal offense to have the question of his sanity passed upon before or after conviction by a jury or by a sanity commission.

These statutes, *supra,* are not at war with either the Fifth or Fourteenth Amendments of the United States Constitution, but, on the contrary, fully afford methods to prevent an insane person from being tried in the courts of Alabama or retained in the prisons of Alabama.

For these reasons, we believe that this Court does not have jurisdiction in this case, and, on such reasons, we respectfully move to dismiss the petition here sought.

WILLIAM N. MCQUEEN,
Attorney General;
JOHN O. HARRIS,
Assistant Attorney General,
Counsel for Respondent.

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